

C.D. Michel – SBN 144258  
Sean A. Brady – SBN 262007  
MICHEL & ASSOCIATES, P.C.  
180 E. Ocean Blvd., Suite 200  
Long Beach, CA 90802  
Telephone: (562) 216-4444  
Facsimile: (562) 216-4445  
Email: sbrady@michellawyers.com

Attorneys for Defendants and Petitioners  
Blackhawk Manufacturing Group, Inc.; Ryan Beezley and Bob Beezley; Ghost Firearms, LLC;  
MFY Technical Solutions, LLC; and Thunder Guns, LLC

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ORANGE**

Coordination Proceeding Special Title (Rule 3.550)

GHOST GUNNER FIREARMS CASES

Included actions:

Cardenas v. Ghost Gunner, Inc., d/b/a GhostGunner.net, et al., Orange County Superior Court Case No. 30-2019-01111797-CU-PO-CJC

McFadyen v. Ghost Gunner, Inc. d/b/a Ghost Gunner.net, et al., San Bernardino Superior Court Case No. CIVDS1935422

KELLEY and DENNIS O’SULLIVAN, in their Individual Capacity and KELLY O’SULLIVAN as Administrator of the Estate of TARA O’SULLIVAN, Deceased,

Plaintiffs,

vs.

GHOST GUNNER INC., d/b/a GHOSTGUNNER.NET, et al.,

Defendants.

Case No. 5167

*Assigned to the Honorable William D. Claster as Coordination Trial Judge, Dept. No. CX104*

**PETITION FOR INCLUSION OF ADD-ON CASE IN GHOST GUNNER FIREARMS CASES, JUDICIAL COUNCIL COORDINATED PROCEEDING NO. 5167; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**

**Proposed Add-On Case:**

Sacramento County Superior Court Case No. 34-2021-00302934-CU-PO-GDS

[Filed concurrently with the supporting Declaration of Sean A. Brady]

1 TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that pursuant to section 404.4 of the California Code of Civil  
3 Procedure, Petitioner-Defendants Juggernaut Tactical, Inc.; Blackhawk Manufacturing Group,  
4 Inc.; Ryan Beezley and Bob Beezley; Ghost Firearms, LLC; MFY Technical Solutions, LLC; and  
5 Thunder Guns, LLC submit this petition for coordination to include an add-on case in the *Ghost*  
6 *Gunner Firearms Cases* (Judicial Council Coordination Proceeding No. 5167). The proposed  
7 add-on case is *Kelley O'Sullivan, et al. v. Ghost Gunner, Inc., et al.*, Case No. 34-2021-  
8 00302934-CU-PO-GDS, pending in the Superior Court of Sacramento County. Petitioners also  
9 request that the *O'Sullivan* matter be stayed until this Court issues a decision on this Petition.

10 This petition is based on Code of Civil Procedure sections 404 and 404.1, California Rules  
11 of Court, Rules 3.400, 3.520-3.523 and 3.544, the attached memorandum of points and  
12 authorities, and the declaration of Sean A. Brady. This petition is made on the grounds that these  
13 actions share common questions of law and fact and that coordination of these actions will  
14 promote both judicial economy and the ends of justice. The declaration of Sean A. Brady sets  
15 forth facts showing that coordination would satisfy the criteria set forth in Code of Civil  
16 Procedure section 404.1.

17 Based on meeting and conferring with counsel for Plaintiffs in both this matter (the *Ghost*  
18 *Gunner Firearms Cases*) and the *O'Sullivan* matter, Petitioner-Defendants anticipate Plaintiffs in  
19 both matters will oppose this request for coordination of *O'Sullivan* as an add-on case. As such,  
20 Petitioner-Defendants request a hearing on this petition to address any concerns this Court may  
21 have regarding coordination.

22  
23 Dated: September 10, 2021

MICHEL & ASSOCIATES, P.C.

s/ Sean A. Brady

Sean A. Brady

Attorney for Defendants-Petitioners  
Blackhawk Manufacturing Group, Inc.; Ryan  
Beezley and Bob Beezley; Ghost Firearms,  
LLC; MFY Technical Solutions, LLC; and  
Thunder Guns, LLC

1 Dated: September 10, 2021

BASSI EDLIN HUIE & BLUM

2 s/ Howard B. Schilsky

3 Michael E. Gallagher, Jr, #195592

4 515 S. Flower Street, Suite 1020

5 Los Angeles, California 90071

6 Telephone: (213) 412-2661

7 Facsimile: (213) 652-1992

8 RENZULLI LAW FIRM, LLP

9 Christopher Renzulli

10 (*Pro Hac Vice* pending)

11 Howard B. Schilsky

12 (*Pro Hac Vice* pending)

13 One North Broadway, Ste. 1005

14 White Plains, NY 10601

15 Tel: (914) 285-0700

16 Fax: (914) 285-1213

17 Email: crenzulli@renzullilaw.com

18 Email: hschlisky@renzulilaw.com

19 Attorneys for Defendant Juggernaut Tactical,  
20 Inc.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The present matter consists of two separately filed but essentially identical cases that were  
4 coordinated by this Court. Since their coordination, a related case, *O’Sullivan, et al. v. Ghost*  
5 *Gunner, Inc., et al.*, Case No. 34-2021-00302934-CU-PO-GDS (“*O’Sullivan*”), has been filed in  
6 the Superior Court of Sacramento County asserting effectively identical causes of action against  
7 the same defendants, for the same conduct, and for the same type of injuries, albeit arising from a  
8 separate incident. Petitioner-Defendants Juggernaut Tactical, Inc.; Blackhawk Manufacturing  
9 Group, Inc.; Ryan Beezley and Bob Beezley; Ghost Firearms, LLC; MFY Technical Solutions,  
10 LLC; and Thunder Guns, LLC (“Petitioners”) request that this Court add-on the *O’Sullivan* case  
11 to this coordinated matter for pretrial purposes.

12 While *O’Sullivan* arises from a different incident than the already coordinated matters, this  
13 Court can and should grant their limited coordination for pretrial purposes only; specifically, for  
14 responsive pleadings, discovery, and dispositive motions. Like this coordinated proceeding,  
15 *O’Sullivan* is undeniably complex and easily meets all of Code of Civil Procedure § 404’s factors.  
16 It presents identical legal and factual issues against the same defendants as in this coordinated  
17 matter. As such, if not coordinated as an add-on case, Petitioners will be forced to unnecessarily  
18 incur significant burdens and costs of litigating the same issues in two separate courts, with the  
19 attendant risk of conflicting rulings that would only prompt additional duplicative litigation. For  
20 the same reasons, judicial economy also favors coordination, as it makes little sense to dedicate  
21 judicial resources from two separate courtrooms to hear identical cases during the pretrial phase  
22 of litigation. In sum, coordination of these matters for pretrial purposes is warranted.

23 Finally, to ensure that *O’Sullivan* does not progress any further while coordination is  
24 being decided, Petitioners also request that this Court order all of these cases remain stayed per its  
25 authority under California Rules of Court, rule 3.544, subd. (c), pending a final decision on this  
26 petition.

27 ///

28 ///

## II. STATEMENT OF FACTS

### A. Applicable Law

When a complex civil action is filed in a different court than an existing coordinated proceeding that shares a common question of fact or law, any party may request that the coordination trial judge include the new matter as an add-on case to the coordinated matter. (California Rules of Court, rule 3.544, subd. (a); see also *Indus. Indem. Co. v. Superior Court* (1989) 214 Cal.App.3d 259, 263.) Cases must be “complex” as defined by California Rule of Court 3.400 to be eligible for coordination. (Code Civ. Proc., §404.) Coordination is proper if doing so will “promote the ends of justice” based on the following factors: “whether the common question of fact or law is predominating and significant to the litigation; the convenience of parties, witnesses, and counsel; the relative development of the actions and the work product of counsel; the efficient utilization of judicial facilities and manpower; the calendar of the courts; the disadvantages of duplicative and inconsistent rulings, orders, or judgments; and, the likelihood of settlement of the actions without further litigation should coordination be denied.” (Code Civ. Proc., §404.1.) Cases can be coordinated for all purposes or limited purposes. (California Rules of Court, rule 3.543, subd. (a).)

### B. Nature of the Related Cases

On November 14, 2019, seventeen plaintiffs who suffered death or injury resulting from a criminal shooting spree filed a complaint in the Superior Court of San Bernardino, commencing *Troy McFadyen, et al v. Ghost Gunner, Inc., et al*, Case No. CIV DS 193542. The complaint asserted six causes of action: (1) Negligence; (2) Negligence Per Se; (3) Negligent Entrustment; (4) Public Nuisance; (5) Violation of Business and Professions Code Section 17200 (Unfair and Unlawful Sales Practices); and (6) Violation of Business and Professions Code Section 17200 (Unfair Marketing Tactics). (*McFadyen Complaint, passim.*). Originally, the complaint named fourteen defendants but added one more later, for a total of fifteen. (Brady Decl., ¶ 4.) Defendants consist of individuals and entities alleged to have manufactured or sold parts that the shooter possibly could have used to assemble the rifle he misused to cause Plaintiffs’ injuries. The shooter was prohibited by law from firearm possession and Plaintiffs allege defendants were negligent by

1 allegedly manufacturing, selling, or marketing parts that can be lawfully sold without requiring  
2 consumer background checks. Because Plaintiffs admit that they do not know which, if any, of  
3 the defendants' products were actually used by the shooter, Plaintiffs rely on a market share  
4 liability theory, incorrectly alleging that defendants' products are fungible.

5 On the same date *McFadyen* was filed, a lone plaintiff filed a nearly identical complaint in  
6 the Superior Court of Orange County, commencing *Francisco Gudino Cardenas v. Ghost*  
7 *Gunner, Inc. et al.*, Case No. 30-2019-01111797-CU-PO-CJC. It asserted identical causes of  
8 action against the identical fourteen defendants and later added the same fifteenth defendant.  
9 (*Cardenas* Complaint, 2:20-3:3, and *McFadyen* Complaint, 4:16-28.) The only real difference  
10 between the *McFadyen* and *Cardenas* matters is that they had been filed in different courts.  
11 (Brady Decl., ¶ 3-4.)

12 Following an unopposed petition for coordination, this Court ordered the two matters  
13 coordinated on May 20, 2021. *McFadyen* and *Cardenas* are now the coordinated matter of *Ghost*  
14 *Gunner Firearms Cases*, Judicial Council Coordination Proceeding No. 5167. (Brady Decl., ¶ 7.)  
15 This coordinated matter has been stayed by this Court pending a determination on this Petition.  
16 (Brady Decl., ¶ 11.) To date, no responsive pleading has been filed in this matter nor has any  
17 discovery been served by any party. (*Ibid.*)

18 On June 17, 2021, two plaintiffs filed a complaint in the Sacramento Superior Court on  
19 behalf of a police officer murdered by a criminal who misused a rifle that they allege may have  
20 been assembled from parts of the sort that defendants are alleged to manufacture or sell,  
21 commencing *Kelley O'Sullivan, et al. v. Ghost Gunner, Inc., et al.*, Case No. 34-2021-00302934-  
22 CU-PO-GDS. Their complaint asserts five of the same six causes of action as the *McFadyen* and  
23 *Cardenas* complaints (omitting the Unfair Marketing Tactics cause of action under 17200) against  
24 all but one of the same defendants, but adding four additional defendants. (*O'Sullivan* Complaint,  
25 2:23-3:9.) The *O'Sullivan* plaintiffs correctly designated their case as a complex matter. (Brady  
26 Decl., ¶ 2.) *O'Sullivan* has been stayed until September 30, 2021. (Brady Decl., ¶ 12.) To date, no  
27 responsive pleading has been filed nor has any discovery been served by any party. (Brady Decl.,  
28 ¶ 11.)

Counsel for Petitioners has confirmed with five of the other eight defendants named in this matter, as well as the additional four defendants named only in *O'Sullivan*, that none of them opposes coordination at least through discovery, while one defendant has reserved its right to oppose coordination for dispositive motions. (Brady Decl., ¶ 9.) The remaining defendants have been unreachable, despite attempts by Petitioners' counsel to contact them or their counsel. (*Ibid.*) Counsel for Plaintiffs in all three actions have indicated that they intend to oppose this petition. (Brady Decl., ¶ 13.)

### III. ARGUMENT

Coordination of *O'Sullivan* as an add-on case to the *Ghost Gunner Firearms Cases* would "promote the ends of justice" and makes practical sense. Indeed, every one of California Code of Civil Procedure § 404.1's factors supports coordination of these closely related matters. Simply put, plaintiffs in each case seek to hold the same defendants liable for the same conduct concerning the same products for the same type of injuries under the same legal theories. As a result, each case will naturally involve effectively identical responses from defendants. Coordination would avoid undue burdens on the parties and the courts where the cases are pending by preventing duplicative litigation and potentially inconsistent rulings.

The only substantive difference between *O'Sullivan* and the coordinated cases is that they arise from two separate incidents. But that is not a sufficient basis to deny this petition. Coordination does not necessarily mean cases are heard before a single court for all purposes. Indeed, Petitioners agree that the *Ghost Gunner Firearms Cases* and the *O'Sullivan* matter should not be coordinated for trial. Courts have authority to coordinate matters for limited purposes. (California Rules of Court, rule 3.543, subd. (a).) And coordination of these matters through discovery and dispositive motion practice is appropriate and justified under § 404.1.

#### A. The *O'Sullivan* matter is complex.

To be eligible for coordination, a matter must be complex. (Code Civ. Proc., §404.) There is no dispute that *O'Sullivan* is complex because the plaintiffs in that matter designated it as such on their civil case cover sheet, and it has been designated as complex by the Sacramento County Superior Court. (Brady Decl., ¶ 2, ¶ 8(a).) *O'Sullivan* is thus eligible for coordination.

1           **B.       Code of Civil Procedure § 404.1’s factors easily support Coordinating**  
2           ***O’Sullivan* as an add-on case for pretrial purposes.**

3           **1.       Significant common questions of law and fact predominate in the**  
4           **matters sought to be coordinated.**

5           It is undeniable that common questions of law and fact significant to the disposition of  
6           both *O’Sullivan* and the *Ghost Gunner Firearms Cases* predominate. Plaintiffs in each matter  
7           allege the same causes of action for negligence, negligent entrustment, public nuisance, and  
8           alleged violation of several consumer protection statutes (Bus. & Prof. Code § 17200/17500).  
9           Each matter involves a third-party allegedly assembling a rifle from various component parts of  
10          purportedly unknown origin, which the third-party criminally misused to cause Plaintiffs’  
11          respective injuries. And plaintiffs in each matter seek to hold the same group of fifteen or so  
12          alleged manufacturers, distributors and retailers of those component parts—which were and are  
13          legal to manufacture and sell—liable for the criminal conduct of the third parties.

14          The three complaints are substantively the same to the point where large sections of them  
15          are verbatim copies of each other. Factual allegations regarding the practices and motivations of  
16          defendants are nearly identical across all three complaints. (Compare, e.g., *McFadyen* Complaint,  
17          5:22-24, and *Cardenas* Complaint, 4:3-5, to identical language in *O’Sullivan* Complaint, 4:5-7, or  
18          *McFadyen* Complaint, 14:22-26, *Cardenas* Complaint, 10:26-11:1, and *O’Sullivan* Complaint,  
19          12:7-9; or *McFadyen* Complaint, 14:26-28, *Cardenas* Complaint, 11:1-4, and *O’Sullivan*  
20          Complaint, 12:10-12.) As are their allegations about the nature of defendants’ products. For  
21          instance, all three complaints identically allege that “One common ‘ghost gun’ part sold by  
22          DEFENDANTS is an 80% receiver, which is designed to fall just outside of the federal definition  
23          of a ‘firearm’ so as to evade federally required background checks and other regulations  
24          applicable to ‘firearms.’ ” (Compare *McFadyen* Complaint, 16:20-22, and *Cardenas* Complaint,  
25          13:1-3, to identical language in *O’Sullivan* Complaint, 14:3-5.) Identical allegations and causes of  
26          action will naturally be met with identical responses from those defendants named in all three  
27          cases (which is all but one of them).

28          Plaintiffs in each matter admit that they do not know which, if any, of the defendants’  
products were used to cause their injuries. (*McFadyen* Complaint, 24:10-14, *Cardenas* Complaint,



21:13-19, and *O’Sullivan* Complaint, 22:8-12.) As such, the fate of each case depends on the viability of plaintiffs’ market share liability theory. To succeed under that theory, plaintiffs must show each of the following: (1) actual injury by an inherently harmful product; (2) the origin of the product(s) that allegedly caused Plaintiffs’ injuries cannot be identified; (3) Defendants’ products are fungible goods; and (4) Plaintiffs have joined as defendants the manufacturers of a substantial share of the market. (See *Sindell v. Abbott Laboratories* (1980) 26 Cal. 3d 588, 612; *Wheeler v. Raybestos-Manhattan* (1992) 8 Cal.App.4th 1152, 1155-1156.) The answers to these inquiries will be the same in each matter, and the legal issue of whether market share liability is viable to plaintiffs’ claims predominates all three litigations. For example, defendants will argue that the products at issue in these matters are demonstrably not fungible. As such, fungibility is one of many dispositive matters of law common in each of these cases.

Where, as here, identical legal questions predominate, coordination is proper even if the precise incidents that gave rise to each matter are not the same. (*Ford Motor Warranty Cases* (2017) 11 Cal.App.5th 626, 635-636, citing *McGhan Medical Corp. v. Superior Court* (1992) 11 Cal.App.4th 804 [coordinating 300 separate cases pending in over 20 California counties which all involved allegations of personal injuries sustained by women who had breast implants made by various companies].) In *McGhan Medical Corp.* different women were caused injuries in separate incidents by various defendants for the same underlying conduct concerning those companies’ products. (*McGhan Medical Corp.*, *supra*, 11 Cal.App.4th at 807 [“The defendants in these cases are various manufacturers of the implant devices, producers of implant materials, and physicians who prescribed or administered the implants.”].) Coordination of the breast implant cases in *McGhan* is analogous to the cases at bar. The *McGhan* court found that coordinating over 300 separate cases provided “enormous benefit to all of the litigants” and that “uniform and centralized” rulings on identical legal issues were justified and achieved through coordination. (*Id.* at 813). Similarly, the predominating questions of law in this case support coordination.

## **2. Coordination increases convenience of parties, witnesses, and counsel.**

Coordination will also advance the convenience of the parties, counsel, and at least some witnesses. Because these cases are effectively identical, at least with respect to the legal theories

1 raised and defendants' alleged practices, defendants' responses will likewise be effectively  
2 identical. For example, Petitioners, and likely all other defendants, intend to demur to each of the  
3 complaints because they fail to state a cause of action on the same grounds, including that a  
4 market-share liability theory is not viable. Having the parties make the same arguments in two  
5 separate courts would waste significant time and resources for all involved. Given the number of  
6 defendants, the resources of the parties will be taxed needlessly by duplication of these efforts.

7 Adding *O'Sullivan* to this coordinated proceeding would also avoid duplicative discovery.  
8 The written discovery that plaintiffs will propound on defendants would likely be essentially the  
9 same in each matter, seeking information about the nature of each defendant's products and  
10 marketing thereof, etc. And many witnesses offered by all parties, both lay and expert, will likely  
11 be identical and offered to provide mostly the same testimony in each matter. Requiring multiple  
12 depositions of these witnesses would be costly, inefficient, and potentially prejudicial. Counsel  
13 would benefit from having discovery streamlined into a single set utilizing a common repository  
14 of relevant documents for all matters, rather than having to maintain multiple sets of essentially  
15 the same evidence. While "all determinations as to whether to coordinate a case are but best  
16 estimates" it seems obvious that "the preparation for trial in terms of depositions, interrogatories,  
17 admissions, collection of physical data, etc., will be better achieved if done in a coordinated  
18 manner." (*Id.* at 813-14.) The convenience of discovery alone justifies pretrial coordination of  
19 these matter. Indeed, Plaintiffs themselves have agreed that joint discovery in these related  
20 matters could be beneficial to all parties. (Brady Decl., ¶ 10.)

21 Although plaintiffs will argue that their discovery responses will differ, this does not  
22 outweigh the substantial benefit of uniform discovery achieved through coordination. Like the  
23 *McGhan* case, which involved at least 300 individual plaintiffs, judicial economy is best served  
24 by avoiding the duplicative discovery that would result from a failure to coordinate. In sum, the  
25 convenience of parties, counsel and witnesses is furthered by coordination.

26 **3. Each action remains at a very early stage.**

27 While coordination may be requested at any time after the filing of a complaint (Cal. Rule  
28 Ct. 3.521(a)), it is particularly appropriate at earlier stages before a case gets significantly further

1 along than the other case(s) for which coordination might otherwise be warranted. Here, there has  
2 been no significant progress in any of the cases. Petitioners were only recently served in the  
3 *O'Sullivan* matter, which has been stayed pending service of all named defendants. (Brady Decl.,  
4 ¶ 12.) And the *Ghost Gunner Firearms Cases* also remain stayed. (Brady Decl., ¶ 11.) No  
5 defendant has yet filed a responsive pleading in any of the actions. (*Ibid.*) Nor has any party  
6 commenced discovery. (*Ibid.*) That all these cases remain in their infancy makes coordination  
7 especially appealing here.

8 **4. Coordination would promote efficient utilization of judicial resources.**

9 Judicial facilities, personnel, and resources would be more efficiently utilized if the cases  
10 are coordinated because there would be a single courtroom hearing the potentially large volume of  
11 essentially identical pretrial motions anticipated in the cases. Different courthouses utilizing  
12 countless judge and staff hours to address the same issues is a burden on both the second court  
13 hearing the motions and the parties having to relitigate them. There is no reason, for example, that  
14 two courts should have to review what will essentially be identical demurrers. In sum, allowing  
15 the actions to proceed in separate courts is an unnecessary burden on judicial resources.

16 **5. The disadvantages of duplicative or inconsistent rulings are significant.**

17 As discussed above, because *O'Sullivan* involves effectively identical causes of action as  
18 the *Ghost Gunner Firearms Cases*, there is a significant risk of duplicative or inconsistent rulings  
19 on significant filings if the cases are not coordinated. This could result in the parties  
20 simultaneously arguing the same legal issues on appeal in one matter while litigating them in a  
21 trial court setting in another. As explained in *McGhan*, “if possible, trial rulings should be  
22 accomplished in a manner permitting uniform and centralized resolution on appeal. This sort of  
23 treatment can be achieved by coordination of motion practice.” (*McGhan Medical Corp., supra*,  
24 11 Cal.App.4th at 813.) This court should similarly so hold.

25 **6. The likelihood of settlement of the actions without further litigation**  
26 **would decrease should coordination be denied.**

27 If coordination is denied, and the matters continue to proceed on separate tracks,  
28 settlement only becomes less attractive to Petitioners (and likely all defendants involved in these

two matters), as it makes a single global settlement less likely.

\* \* \* \*

As established above, *all* of the §404.1 factors support coordination of *O'Sullivan* as an add-on case with the *Ghost Gunner Firearms Cases* for pretrial purposes.

**C. Petitioners do not seek coordination of these cases for trial.**

Petitioners do not seek coordination for trial. Thus, the differing factual circumstances in *O'Sullivan* and the *Ghost Gunner Firearms Cases* does not warrant denial of this petition. This Court can and should exercise its authority under rule 3.543(a) to order separate trials at the close of discovery and dispositive motion practice. Until the time of trial, however, if such time arises, for all of the reasons provided above, coordination is appropriate for motion practice and discovery. If coordination is proper in the breast implant cases, which involved a “petition for coordination of at least 300 separate cases,” pending in “over 20 California counties,” with “additional cases ... being filed almost daily” against various “manufacturers of the implant devices, producers of implant materials, and physicians who prescribed or administered the implants” (*McGhan Medical Corp.*, *supra*, 11 Cal.App.4th at 807), then certainly the three matters here can and should similarly be coordinated pretrial.

**D. All Matters Should Be Stayed Pending Ruling on This Petition.**

This Court should stay *O'Sullivan* and maintain the current stay on the *Ghost Gunner Firearms Cases* pending its ruling on this Petition. “Pending any determination of whether coordination is appropriate, the judge making that determination may stay any action being considered for, or affecting an action being considered for, coordination.” (Code Civ. Proc., §404.5.) Further, any party may file a motion for an order under section 404.5 staying the proceedings in any action being considered for coordination, and that motion for a stay may be included within the petition for coordination itself. (California Rules of Court, rule 3.515, subd. (a).) It is sensible to stay these matters while this petition is adjudicated, so that they do not move forward and potentially deprive the parties and the Court of the benefits of coordination discussed above. A stay should issue on all matters to preserve the status quo pending resolution of this petition.

1 **IV. CONCLUSION**

2 For the above reasons, Petitioners respectfully request that the *O'Sullivan* matter be  
3 coordinated as an add-on case with the *Ghost Gunner Firearms Cases* for all pretrial purposes;  
4 specifically, for responsive pleadings, discovery, and dispositive motions. Petitioners further  
5 request that this Court order a stay on both *O'Sullivan* and the *Ghost Gunner Firearms Cases*  
6 pending its determination of this petition.

7  
8 Dated: September 10, 2021

MICHEL & ASSOCIATES, P.C.

9 s/ Sean A. Brady

Sean A. Brady

10 Attorney for Defendants-Petitioners  
Blackhawk Manufacturing Group, Inc.; Ryan  
11 Beezley and Bob Beezley; Ghost Firearms,  
LLC; MFY Technical Solutions, LLC; and  
12 Thunder Guns, LLC

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Michael E. Gallagher, Jr, #195592

15 515 S. Flower Street, Suite 1020

Los Angeles, California 90071

16 Telephone: (213) 412-2661

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One North Broadway, Ste. 1005

21 White Plains, NY 10601

22 Tel: (914) 285-0700

Fax: (914) 285-1213

23 Email: crenzulli@renzullilaw.com

Email: hschilsky@renzullilaw.com

24 Attorneys for Defendant Juggernaut Tactical,  
25 Inc.